

By the Committee on Regulated Industries and Senator Klein

315-2089A-98

1 A bill to be entitled
 2 An act relating to telephonic solicitations;
 3 amending s. 501.059, F.S.; providing
 4 legislative intent; revising provisions
 5 relating to telephonic solicitations; revising
 6 definitions; revising procedures for limiting
 7 or prohibiting telephonic solicitations;
 8 revising certain fees; providing for an
 9 affirmative defense; providing for notification
 10 of candidates for public office; revising
 11 requirements regulating telephonic
 12 solicitations; requiring the Department of
 13 Agriculture and Consumer Services to provide
 14 certain notice of violations; providing for
 15 legislative review of certain fees; amending s.
 16 98.097, F.S.; providing that the central voter
 17 file shall indicate voters on "no telephonic
 18 solicitation" list; providing an effective
 19 date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 501.059, Florida Statutes, is
 24 amended to read:

25 501.059 Telephonic ~~Telephone~~ solicitation.--

26 (1) The Legislature, while recognizing the right of
 27 persons and organizations to conduct telephonic solicitation
 28 activities, acknowledges an individual's basic right to
 29 privacy. It is the intent of the Legislature to protect this
 30 right to privacy in a way which does not restrict all
 31 telephonic solicitation activities but rather allows

1 individuals who do not want to receive uninvited telephonic
2 solicitations to make it known to the public by placing their
3 telephone numbers on the "no telephonic solicitations" list
4 provided in this section. Further, it is the intent of the
5 Legislature to prohibit uninvited telephonic solicitations to
6 such telephone numbers on the "no telephonic solicitations"
7 list. The Legislature finds that the method provided in this
8 section for regulating uninvited telephonic solicitations is
9 drawn in such a manner so as to minimize the burden on
10 solicitation activities.

11 (2)(1) As used in this section:

12 (a) "Telephonic solicitation ~~sales call~~" means a call
13 made by a telephone solicitor to a residential, mobile, or
14 telephonic paging device telephone number consumer, for the
15 purpose of soliciting a sale of any consumer goods or
16 services, including calls made for the purpose of obtaining
17 information that will or may later be used for the
18 solicitation of a sale of consumer goods or services, or a
19 call made for the purpose of soliciting a contribution of
20 money, property, or financial assistance, or any other thing
21 of value, including requests on behalf of political parties,
22 candidates, or ballot proposals ~~or for the purpose of~~
23 ~~soliciting an extension of credit for consumer goods or~~
24 ~~services, or for the purpose of obtaining information that~~
25 ~~will or may be used for the direct solicitation of a sale of~~
26 ~~consumer goods or services or an extension of credit for such~~
27 ~~purposes.~~

28 (b) "Consumer goods or services" means any real
29 property or any tangible or intangible personal property which
30 is normally used for personal, family, or household purposes,
31 including, without limitation, cemetery lots, timeshare

1 estates, financial services, insurance, telecommunications
2 services, and any such property intended to be attached to or
3 installed in any real property without regard to whether it is
4 so attached or installed, as well as ~~cemetery lots and~~
5 ~~timeshare estates, and any services related to real such~~
6 property or any tangible or intangible personal property.

7 (c) "Uninvited ~~Unsolicited~~ telephonic solicitation
8 ~~sales call~~" means a telephonic solicitation to any
9 residential, mobile, or telephonic paging device telephone
10 number unless the telephonic solicitation is ~~sales call other~~
11 ~~than a call made+~~

12 1. in response to an express request of the person
13 called, or in response to a sign or other form of
14 advertisement placed by the person called, or is directed to a
15 person with whom the telephone solicitor has a prior or an
16 existing relationship. A telephonic solicitation made in
17 connection with an existing relationship includes, but is not
18 limited to, an inquiry regarding an existing debt, contract,
19 or warranty, payment or performance of which has not been
20 completed at the time of such call.+

21 2. ~~Primarily in connection with an existing debt or~~
22 ~~contract, payment or performance of which has not been~~
23 ~~completed at the time of such call;~~

24 3. ~~To any person with whom the telephone solicitor has~~
25 ~~a prior or existing business relationship; or~~

26 4. ~~By a newspaper publisher or his or her agent or~~
27 ~~employee in connection with his or her business.~~

28 (d) "Commission" means the Florida Public Service
29 Commission.

30 (e) "Telephone solicitor" means any natural person,
31 firm, organization, partnership, association, or corporation,

1 or a subsidiary or affiliate thereof, ~~doing business in this~~
2 ~~state,~~ who makes or causes to be made a telephonic
3 solicitation sales call, including, but not limited to, calls
4 made by use of automated dialing or recorded message devices
5 from a location in this state, or from other states or
6 nations, to residences, mobile telephones, or telephonic
7 paging devices in this state.

8 (f) "Subscriber" means any individual who requests
9 that the department place the individual's residential,
10 mobile, or telephonic paging device telephone number on the
11 department's no telephonic solicitation list and who pays the
12 applicable fee to the department. ~~"Consumer" means an actual~~
13 ~~or prospective purchaser, lessee, or recipient of consumer~~
14 ~~goods or services.~~

15 (g) ~~"Merchant" means a person who, directly or~~
16 ~~indirectly, offers or makes available to consumers any~~
17 ~~consumer goods or services.~~

18 (h) ~~"Doing business in this state" refers to~~
19 ~~businesses who conduct telephonic sales calls from a location~~
20 ~~in Florida or from other states or nations to consumers~~
21 ~~located in Florida.~~

22 (g)(i) "Department" means the Department of
23 Agriculture and Consumer Services.

24 (3)(2) Any telephone solicitor who calls ~~makes an~~
25 ~~unsolicited telephonic sales call to~~ a residential, mobile, or
26 telephonic paging device telephone number shall identify
27 himself or herself by his or her true first and last names and
28 the business or organization on whose behalf he or she is
29 soliciting immediately upon making contact by telephone with
30 the person who is the object of the telephonic telephone
31 solicitation.

1 ~~(4)(3)~~(a) Any residential, mobile, or telephonic
2 paging device telephone subscriber desiring to be placed on a
3 "no telephonic sales solicitation calls" listing indicating
4 that the subscriber does not wish to receive uninvited
5 ~~unsolicited~~ telephonic solicitations ~~sales calls~~ may notify
6 the department and be placed on that listing upon receipt by
7 the department of:

8 1. A nonrefundable \$10 initial listing fee for a
9 charge. ~~This listing which may shall~~ be renewed by the
10 ~~department~~ annually ~~for each consumer~~ upon receipt by the
11 ~~department~~ of a ~~renewal notice and a~~ \$5 listing fee; or

12 2. A nonrefundable \$15 listing fee for a listing which
13 shall remain in effect for 3 years and may be renewed upon
14 receipt by the department of a nonrefundable \$15 listing fee
15 assessment.

16 (b) The department shall update its "no telephonic
17 ~~sales solicitation calls~~" listing upon receipt of initial
18 consumer subscriptions or renewals. The department shall
19 compile such listings three times each year and shall provide
20 this listing at least 30 days prior to the first day of April,
21 August, and December, when the listings shall be considered
22 current, for a fee to telephone solicitors upon request.

23 (c) All fees imposed pursuant to this section shall be
24 deposited in the General Inspection Trust Fund for the
25 administration of this section.

26 ~~(5)(4)~~ No telephone solicitor shall make or cause to
27 be made any uninvited ~~unsolicited~~ telephonic solicitation
28 ~~sales call~~ to any residential, mobile, or telephonic paging
29 device telephone number appearing on ~~if the number for that~~
30 ~~telephone appears in the then-current quarterly~~ listing
31 published by the department. Any telephone solicitor or

1 person who offers for sale any consumer information which
2 includes residential, mobile, or telephonic paging device
3 telephone numbers, except directory assistance and telephone
4 directories sold by telephone companies ~~and organizations~~
5 ~~exempt under s. 501(c)(3) or (6) of the Internal Revenue Code,~~
6 shall screen and exclude those numbers which appear on the
7 department's division's then-current "no telephonic sales
8 solicitation calls" list. ~~This subsection does not apply to~~
9 ~~any person licensed pursuant to chapter 475 who calls an~~
10 ~~actual or prospective seller or lessor of real property when~~
11 ~~such call is made in response to a yard sign or other form of~~
12 ~~advertisement placed by the seller or lessor.~~

13 (6)(5)(a) A contract made pursuant to a telephonic
14 solicitation sales call is not valid and enforceable against a
15 consumer unless made in compliance with this subsection.

16 (b) A contract made pursuant to a telephonic
17 solicitation sales call:

- 18 1. Shall be reduced to writing and signed by the
19 consumer.
- 20 2. Shall comply with all other applicable laws and
21 rules.
- 22 3. Shall match the description of goods or services as
23 principally used in the telephonic telephone solicitations.
- 24 4. Shall contain the name, address, and telephone
25 number of the seller, the total price of the contract, and a
26 detailed description of the goods or services being sold.
- 27 5. Shall contain, in bold, conspicuous type,
28 immediately preceding the signature, the following statement:
29 "You are not obligated to pay any money unless you sign
30 this contract and return it to the seller."
31

1 6. May not exclude from its terms any oral or written
2 representations made by the telephone solicitor to the
3 consumer in connection with the transaction.

4 (c) The provisions of this subsection do not apply to
5 contractual sales regulated under other sections of the
6 Florida Statutes, or to the sale of financial services,
7 security sales, or sales transacted by companies or their
8 wholly owned subsidiaries or agents, which companies are
9 regulated by chapter 364, or to the sale of cable television
10 services to the duly franchised cable television operator's
11 existing subscribers within that cable television operator's
12 franchise area, or to any sales where no prior payment is made
13 to the merchant and an invoice accompanies the goods or
14 services allowing the consumer 7 days to cancel or return
15 without obligation for any payment.

16 (7)(a) No telephone solicitor may make a subsequent
17 call to a subscriber in connection with a prior or existing
18 relationship when that subscriber has informed the telephone
19 solicitor that the subscriber does not want to receive any
20 more telephonic solicitations from, or on behalf of, that
21 particular telephone solicitor.

22 (b) It shall be an affirmative defense in any action
23 brought under this subsection that the telephone solicitor
24 has:

25 1. Established and implemented written procedures to
26 comply with this subsection;

27 2. Trained its personnel in such procedures;

28 3. Maintained and recorded current lists of persons
29 who have requested to receive no more telephonic solicitations
30 from the telephone solicitor in accordance with this
31 subsection; and

1 4. Made any subsequent call as the result of an error.

2
3 Nothing in this paragraph shall be construed to require the
4 implementation of these procedures in order to comply with
5 this subsection.

6 (c) This subsection does not apply to any telephonic
7 solicitation made in connection with an existing debt or
8 contract, payment, or performance of which has not been
9 completed at the time of such call.

10 ~~(8)(6)(a) The officer with whom a person qualifies as~~
11 ~~a candidate for public office pursuant to chapter 99 shall~~
12 ~~notify the qualifying candidate of the provisions of this~~
13 ~~section. A merchant who engages a telephone solicitor to make~~
14 ~~or cause to be made a telephonic sales call shall not make or~~
15 ~~submit any charge to the consumer's credit card account or~~
16 ~~make or cause to be made any electronic transfer of funds~~
17 ~~until after the merchant receives from the consumer a copy of~~
18 ~~the contract, signed by the purchaser, which complies with~~
19 ~~this section.~~

20 ~~(b) A merchant who conducts a credit card account~~
21 ~~transaction pursuant to this section shall be subject to the~~
22 ~~provisions of s. 817.62.~~

23 ~~(c) The provisions of this subsection do not apply to~~
24 ~~a transaction.~~

25 ~~1. Made in accordance with prior negotiations in the~~
26 ~~course of a visit by the consumer to a merchant operating a~~
27 ~~retail business establishment which has a fixed permanent~~
28 ~~location and where consumer goods are displayed or offered for~~
29 ~~sale on a continuing basis.~~

30 ~~2. In which the consumer may obtain a full refund for~~
31 ~~the return of undamaged and unused goods or a cancellation of~~

1 ~~services notice to the seller within 7 days after receipt by~~
2 ~~the consumer, and the seller will process the refund within 30~~
3 ~~days after receipt of the returned merchandise by the~~
4 ~~consumer;~~

5 ~~3. In which the consumer purchases goods or services~~
6 ~~pursuant to an examination of a television, radio, or print~~
7 ~~advertisement or a sample, brochure, or catalog of the~~
8 ~~merchant that contains:~~

9 ~~a. The name, address, and telephone number of the~~
10 ~~merchant;~~

11 ~~b. A description of the goods or services being sold;~~
12 ~~and~~

13 ~~c. Any limitations or restrictions that apply to the~~
14 ~~offer; or~~

15 ~~4. In which the merchant is a bona fide charitable~~
16 ~~organization or a newspaper as defined in chapter 50.~~

17 ~~(9)(7)(a)~~ (9)(7)(a) No person shall make or knowingly allow a
18 telephonic solicitation sales call to be made if such call
19 involves an automated system for the selection or dialing of
20 telephone numbers or the playing of a recorded message when a
21 connection is completed to a number called.

22 (b) Nothing herein prohibits the use of an automated
23 telephone dialing system with live messages if the calls are
24 made or messages given solely in response to calls initiated
25 by the persons to whom the automatic calls or live messages
26 are directed or if the telephone numbers selected for
27 automatic dialing have been screened to exclude any telephone
28 number that subscriber who is included on the department's
29 then-current "no telephonic sales solicitation calls" listing
30 or any unlisted telephone number, or if the calls are directed
31 to a person with whom the telephone solicitor has a prior or

1 an existing relationship ~~made concern goods or services that~~
2 ~~have been previously ordered or purchased.~~ However, all
3 automatic telephone dialing systems shall be equipped with a
4 disconnect feature which automatically clears the telephone
5 line after the person answering the telephone terminates the
6 call.

7 (10)~~(8)~~ The department shall investigate any
8 complaints received concerning violations of this section.
9 If, after investigating any complaint, the department finds
10 that there has been a violation of this section, the
11 department shall notify the telephone solicitor of such
12 violation. Upon a fourth violation,the department or the
13 Department of Legal Affairs may bring an action to impose a
14 civil penalty and to seek other relief, including injunctive
15 relief, as the court deems appropriate against the telephone
16 solicitor. The civil penalty shall not exceed \$10,000 per
17 violation and shall be deposited in the General Inspection
18 Trust Fund if the action or proceeding was brought by the
19 department, or the Consumer Frauds Trust Fund if the action or
20 proceeding was brought by the Department of Legal Affairs.
21 This civil penalty may be recovered in any action brought
22 under this part by the department, or the department may
23 terminate any investigation or action upon agreement by the
24 person to pay a stipulated civil penalty. The department or
25 the court may waive any civil penalty if the person has
26 previously made full restitution or reimbursement or has paid
27 actual damages to the consumers who have been injured by the
28 violation.

29 (11)~~(9)~~(a) In any civil litigation resulting from a
30 transaction involving a violation of this section, the
31 prevailing party, after judgment in the trial court and

1 exhaustion of all appeals, if any, shall receive his or her
2 reasonable attorney's fees and costs from the nonprevailing
3 party.

4 (b) The attorney for the prevailing party shall submit
5 a sworn affidavit of his or her time spent on the case and his
6 or her costs incurred for all the motions, hearings, and
7 appeals to the trial judge who presided over the civil case.

8 (c) The trial judge shall award the prevailing party
9 the sum of reasonable costs incurred in the action plus a
10 reasonable legal fee for the hours actually spent on the case
11 as sworn to in an affidavit.

12 (d) Any award of attorney's fees or costs shall become
13 a part of the judgment and subject to execution as the law
14 allows.

15 (e) In any civil litigation initiated by the
16 department or the Department of Legal Affairs, the court may
17 award to the prevailing party reasonable attorney's fees and
18 costs if the court finds that there was a complete absence of
19 a justiciable issue of either law or fact raised by the losing
20 party or if the court finds bad faith on the part of the
21 losing party.

22 (12)~~(10)~~ The commission shall by rule ensure that
23 telecommunications companies inform their customers of the
24 provisions of this section. The notification may be made by:

25 (a) Annual inserts in the billing statements mailed to
26 customers; and

27 (b) Conspicuous publication of the notice in the
28 consumer information pages of the local telephone directories.

29 Section 2. Prior to the convening of the 2001 Regular
30 Session of the Legislature, the Legislature shall review the
31 fees established in s. 501.059(4), Florida Statutes, as

1 amended by this act, to determine whether such fees are set at
2 a level commensurate with the direct and indirect costs of the
3 "no telephonic solicitation" listing program.

4 Section 3. Present subsections (2) and (3) of section
5 98.097, Florida Statutes, are renumbered as subsections (3)
6 and (4), respectively, and a new subsection (2) is added to
7 that section to read:

8 98.097 Central voter file; administration by division;
9 public access.--

10 (2) The central voter file shall, in addition to other
11 information required by law, indicate if the voter is on the
12 "no telephonic solicitation" list as provided in s. 501.059.

13 Section 4. This act shall take effect January 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1594
4 Allows solicitations for survey research purposes and in
5 response to advertisements placed by the person called.
6 Eliminates time restrictions on the exemption for calling
7 people on the no solicitation list with whom the solicitor had
8 a prior existing relationship.
9 Prohibits solicitors from calling people on the no
10 solicitation list with whom they had an existing relationship
11 once the subscriber requests not to be called again, but
12 provides an affirmative defense to actions for violating this
13 provision if a solicitor has met certain requirements.
14 Requires the Department of Agriculture and Consumer Services
15 to provide solicitors with copies of the no solicitation lists
16 within specific time frames and eliminates the fees for
17 solicitors to obtain the no solicitation list.
18 Requires the Department of Agriculture and Consumer Services
19 to notify solicitors when they violate the law and prohibits
20 the department from taking enforcement action until a
21 solicitor has committed a fourth violation.
22 Requires the Division of Elections of the Department of State
23 to indicate on the central voter file it maintains if a voter
24 is on the no solicitation list.
25 Restores requirements for contracts entered into pursuant to a
26 telephone sales call, but does not restore language
27 prohibiting a merchant from charging a credit card for such
28 sales until the consumer sends a signed copy of the contract.
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